

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

STEPHANIE D. DYE,

Plaintiff,

v.

MICHAEL J. ASTRUE, Commissioner of
Social Security,

Defendant.

Case No. C10-5075 RJB

ORDER ADOPTING REPORT AND
RECOMMEDATION

This matter comes before the Court on the Report and Recommendation of the Honorable Karen L. Strombom, United States Magistrate Judge. Dkt. 20. The Magistrate Judge recommends that the Court should conclude that Stephanie D. Dye was properly denied social security benefits because application of the proper legal standard and substantive evidence support the Administrative Law Judge's (ALJ) finding that Plaintiff Dye is not disabled. Plaintiff has filed objections to the Report and Recommendation. Dkt. 21. The Defendant has filed a response. Dkt. 25.

The Plaintiff's objections to the Report and Recommendation are primarily restatements of her previous arguments. These are: (1) the ALJ improperly evaluated claimant's chronic fatigue syndrome and fibromyalgia; (2) the ALJ failed to properly evaluate the medical evidence; (3) the ALJ failed to properly evaluate claimant's testimony regarding her symptoms and limitations; (4) the ALJ failed to properly evaluate lay witness evidence; and (5) the ALJ

1 improperly determined claimant's residual functional capacity. Dkt. 21. The Court is not
2 persuaded by Plaintiff's argument.

3 **Chronic Fatigue Syndrome and Fibromyalgia**

4 Plaintiff argues that the ALJ failed to properly evaluate the evidence concerning the
5 limitations caused by her chronic fatigue syndrome and fibromyalgia. The Magistrate Judge
6 rejected this argument, finding that Plaintiff failed to state with any specificity what limitations
7 the ALJ failed to consider. Plaintiff's objection does not address this finding in the Report and
8 Recommendation, but simply restates the summary assertion that an error occurred. The Court
9 concurs with the finding of the Magistrate Judge. See *Carmicle v. Commissioner of Social Sec.*
10 *Admin.*, 533 F.3d 1155, 1161 n.2 (9th Cir. 2008).
11

12 **Evaluation of Medical Evidence**

13 Plaintiff objects to the finding of the Report and Recommendation that the ALJ properly
14 evaluated and discounted the disability opinion of Dr. Brooks. This objection is without merit,
15 because the Report and Recommendation clearly sets forth the basis for the ALJ's evaluation of
16 this medical evidence as conclusory, unsupported by objective findings, and of unclear
17 authorship. The Court agrees with the finding of the Report and Recommendation that the
18 record supports the ALJ's finding that not a single objective medical finding was cited in support
19 of the allegation that the claimant was disabled and unable to work.
20

21 Plaintiff's argument regarding the evaluation of Drs. Ahmed, Mayers, and Terry is
22 simply a conclusory statement completely lacking in any specificity. It was clear to the
23 Magistrate Judge, and to this Court, that the ALJ reviewed the medical evidence and discounted
24 the medical opinions that were inconsistent with his review of the record as a whole.
25
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1 Accordingly, the Magistrate Judge properly found the ALJ properly evaluated the medical
2 evidence.

3 **Evaluation of Claimant's Testimony**

4 Plaintiff objects to the Magistrate Judge's finding that the ALJ properly discredited Dye's
5 testimony because it was inconsistent with clinical observations. Plaintiff asserts that this
6 finding is improper due to the ALJ's failure to properly evaluate all the medical evidence;
7 particularly that of Dr. Brooks. The Court is not persuaded by plaintiff's argument. As
8 previously noted, the ALJ properly discounted the testimony of Dr. Brooks. The Report and
9 Recommendation sets forth the evidence supporting the ALJ's credibility determination.
10 Plaintiff's objections are without merit.

12 **Evaluation of Lay Testimony**

13 Plaintiff alleges that Magistrate Judge improperly found harmless error in the ALJ's
14 improper rejection of testimony of Plaintiff's husband regarding Plaintiff's ability to perform
15 various activities. The Magistrate Judge found that "[g]iven that the ALJ properly evaluated the
16 medical evidence in the record, which does contradict plaintiff's husband's comments, and did
17 not err in discounting plaintiff's credibility regarding her alleged symptoms and limitations,"
18 substantial evidence in the record overall supports the ALJ in his assessment. Dkt. 20 pp. 16
19 The Court concurs with the Magistrate Judge.

21 **Residual Functional Capacity**

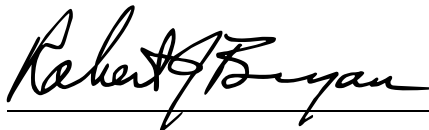
22 Plaintiff's objection to the ALJ's assessment of residual functional capacity is based solely
23 upon the previously addressed issues regarding evaluation of the evidence of disability. Plaintiff's
24 objection is without merit.
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Conclusion

The Court, having reviewed Plaintiff's complaint, the Report and Recommendation of Judge Karen L. Strombom, United States Magistrate Judge, objections to the Report and Recommendation, the response, and the remaining record, does hereby find and **ORDER**:

- (1) The Court adopts the Report and Recommendation (Dkt. 20);
- (2) The administrative decision is **AFFIRMED**;
- (3) The Clerk is directed to send copies of this Order to Plaintiff's counsel, Defendant's counsel and Magistrate Judge Karen L. Strombom.

DATED this 22nd day of March, 2011.

A handwritten signature in black ink, reading "Robert J. Bryan", written over a horizontal line.

ROBERT J. BRYAN
United States District Judge